



The Salisbury Planning Board held its regular meeting Tuesday, June 24, 2008, in the City Council Chamber of the Salisbury City Hall at 4 p.m. with the following being present and absent:

PRESENT: Karen Alexander, Dr. Mark Beymer, Maggie Blackwell, Robert Cockerl, Richard Huffman, Craig Neuhardt, Jeff Smith, Valerie Stewart, Albert Stout, and Diane Young.

ABSENT: Tommy Hairston

STAFF: Dan Mikkelson, Preston Mitchell, Diana Moghrabi, and David Phillips

This meeting was digitally recorded for Access 16.

Dr. Mark Beymer, Chair, called the meeting to order and offered an invocation. The minutes of the June 10, 2008, meeting were approved as submitted. The Planning Board adopted the agenda as submitted.

Dr. Beymer explained the Courtesy Hearing process and swore in persons who planned to speak during the quasi-judicial hearing.

NEW BUSINESS

A. Special Use Permit

- Swear in those persons testifying at courtesy hearing
- Present evidence—courtesy hearing
 - Receive testimony from staff
 - Receive testimonies from proponents and opponents
- Findings of facts
- Recommendation to City Council

SUP-03-08 Extreme Motorcycles
610 West Ritchie Road
Tax Map 401, Parcels 055 & 117
Request to allow alcohol sales

David Phillips made a staff presentation.

This submittal is a request for a special Use Permit for Extreme Motorcycles located at 610 West Ritchie Road, to allow alcohol sales as permitted per Chapter 2.7 (C) of the Land Development Ordinance with the additional condition of Chapter 3.3 (D):

1. No such facility shall be located within five hundred feet of any lot containing a school.

Based on information from the City's GIS and a field inspection, there are no schools within 500 feet of the site.

Decision-Making Rules

1. The zoning ordinance (LDO) must spell out the standards for granting a Special Use Permit, and those decision-making standards cannot be developed on a case-by-case basis.
2. The decision to grant or deny the SUP, or to impose conditions on the approval, must be based solely on the LDO standards.
3. The standards must provide sufficient guidance for decisions. The applicant, neighbors, and board(s) all need to know what the ordinance requires for approval.

Production of Evidence

1. The burden is on the applicant to present sufficient evidence to allow the board(s) to make findings that the required standards will be met.
2. The burden is on an opponent to present sufficient evidence that a standard will not be met.
3. If insufficient evidence is presented that the required standards will be met, then the SUP must be denied.
4. If uncontradicted evidence is presented that all of the standards will be met, then the SUP must be issued.
5. If uncontradicted evidence is presented that even one of the general or specific standards will not be met, then the SUP must be denied.
6. If there is conflicting evidence, the board(s) decides what the facts are and decides accordingly.

Standards for Decision

1. No such facility shall be located within five hundred (500) feet of any lot containing a school.
2. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and

3. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
4. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed.

The property is zoned Highway Business, which allows alcohol.

No one spoke in opposition.

Those speaking in favor

Dirk Newsome, 610 W. Ritchie Road, owner of Extreme Motorcycles, stated that he was in favor of this Special Use Permit. The purpose of this request is to allow for more special event planning for his facility. If customers spend more relaxed social time in his shop, they may spend more money. He is considering serving alcohol at special Friday and Saturday events. He is aware that he could use a special event permit.

Hours of operation are from 9 a.m.-6 p.m. Monday through Friday and 9 a.m.-5 p.m. on Saturday. They may add Sunday hours in the future. They do not intend to stay open until 11 o'clock p.m. They do not intend to be a bar. They plan to limit beverages. It is not a place to get inebriated.

He only has one neighbor (boat dealership) who, he said, did not oppose the request and knew they were making this request before Planning Board today.

Board Discussion

Diane Young asked, "If I own a business and I want to have a refrigerator with cold beer in it to offer a customer who is coming to do some shopping—do all businesses have to obtain a special use permit or is this just because they are selling alcohol?" David Phillips said the SUP was required due to the sale and consumption of alcohol on site that is not associated with a restaurant.

Maggie Blackwell stated that, "In light of the fact that we have no evidence presented against SUP-03-08 we are limited in our actions."

1. Dr. Beymer stated that, "Planning Board finds that the facility is not within five hundred (500) feet of any lot containing a school." All members VOTED AYE. (10-0)
2. Jeff Smith stated, "The finding above allows this to be compatible with all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and

3. Jeff Smith stated, "Based on the proposed plan as submitted and potentially approved this will be visually and functionally compatible to the surrounding area; there are no changes being made to the exterior." Albert Stout seconded with all members voting AYE. (10-0)
4. Jeff Smith continued to say, "I do find the public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property. Dick Huffman seconded the motion with all members voting AYE. (10-0)
5. Jeff Smith said, "Based on the findings of fact that have been entered into the record Planning Board makes a recommendation and move that we make the recommendation of approval for SUP-03-08. The MOTION was seconded with all members voting AYE. (10-0)

David Phillips announced that there will be public notifications in the *Salisbury Post* and SUP-03-08 will go before City Council July 15, 2008.

B. District Map Amendments

- Explanation of procedure
- Staff Presentation
- Courtesy Hearing
- Board discussion
- Statement of Consistency
- Recommendation

CD-7-03-2008

Timmy Garriss
 DBA Hendrix BBQ
 2488 Statesville Boulevard
 Tax Map & Parcels 329C261, 329-076, 329C405
 (History: Z-19S-03 / Z-20S-03; Ord.'s 2004-09, 2004-10, 2004-11)

Preston Mitchell made a staff presentation. Conditional districts are petitioned for by the owner. Council can rescind a conditional district.

Request to amend the Land Development District Map by rezoning approximately 1.13 acres (three parcels) in order to amend and enlarge an existing Conditional District (CD) Overlay with base zoning of Neighborhood Mixed-Use (NMX)

The petition does not propose to change the existing NMX base district; only to amend and enlarge the existing Conditional District Overlay to now include the restaurant building site. The CD Overlay currently covers the parking lot on the corner of Ashbrook Road and Hwy 70.

The petitioner proposes to construct an access drive from the new parking lot to Ashbrook Road. The 1.13-acre site is currently developed with a 1,680-square foot single-story commercial building operating as a restaurant with surface parking on three sides (front and both sides) that reaches to the intersection of Ashbrook Road and Highway 70. Ashbrook Road is a residential (local) road providing access into Westcliffe subdivision and Statesville Boulevard (Highway 70) is a 4-lane landscape-divided highway.

Vision 2020 Comprehensive Plan Applicable Policies & Objectives

Policy S-2: Access to major streets shall be from intersecting minor streets, rather than private driveways, whenever possible.

Policy S-3: Central medians shall be incorporated into the design of new or improved major streets whenever possible.

Policy S-8: Road widening and/or the designation of one-way pairs shall not be allowed for streets where the original design intent was otherwise. This policy is intended to prevent degradation of the design integrity and livability of an existing residential or commercial area for the primary purpose of moving greater traffic volumes. Exceptions to this policy may include actions to correct critical safety problems.

Policy C-10: The City shall encourage the consolidation of commercial driveways onto major streets and the connection of adjacent parking lots.

The TRC moved and seconded a recommendation to approve the CD as submitted (with minor technical corrections) with two recommended conditions: 1) that shrubs be placed between the street yard trees along Highway 70 to further screen the parked vehicles, and 2) that the existing dumpsters be placed within dumpster enclosures according to minimum Land Development Ordinance standards.

The petitioner voluntarily complied with the shrub condition and has shown the additional plantings on the resubmitted plan.

The previous “S” district was adopted by City Council with two conditions. The Department of Transportation (DOT) maintained a temporary driveway to Ashbrook during construction of Highway 70. In 2006, City Council requested DOT remove the temporary driveway when their construction permitted that to happen.

Those speaking in opposition

Mark Dinse, 2555 Enon Church Road, is the current president of Westcliffe Association. Mr. Garriss did approach the association in 2003 in hopes of putting in the additional parking lot. Their neighborhood covenants did not allow that to happen. Eleven members at that time did not want the installation of the parking lot. Thirty members voted to allow the parking lot, but did not want to allow ingress/egress access onto Ashbrook Road. Ten or eleven members would allow the parking lot with access.

This issue has been in the neighborhood newsletter. Seventy out of about one hundred seventy five residents are members of the association, but every resident receives the newsletter. Two residents let Mr. Dinse know they were in favor of the access to Ashbrook Road. The remaining members of the association are “opposed to having the driveway access onto Ashbrook Road.”

Turning into Ashbrook Road from Highway 70 has severe safety issues. This is a very busy entrance.

Doug Kelly, 416 Willow Road, has parents that live at 104 Ashbrook Road which is directly across from the proposed driveway. His parents wanted to make a note that the headlights coming from the driveway shine into their bedroom window. They are opposed to the access.

He met with Mr. Dees and Mr. Garriss four years ago. “Without the people of Westcliffe, that parking lot would not have ever been there. That was zoned residential. We allowed this for one reason–We do not want you to lose business, but *do not* bring it [traffic] in and out of Westcliffe.” Mr. Kelly said Mr. Garriss agreed to their demand.

Highway 70 causes all of us discomfort.

Those speaking in favor

Jay Dees, 121 E. Kerr Street, is the attorney for the owner Timmy Garriss. Mr. Dees left information at each Planning Board member’s chair. The property was rezoned in 2003. Prior to that meeting he advised his client that they should go to the neighborhood association with their proposal of a conceptual plan with the access to Ashbrook Road. There was a vote from the association not to allow access to Ashbrook Road, not a deal between the client, Mr. Dees or the association.

Mr. Dees had recommended that they reassess the situation after the Highway 70 improvements were complete. In 2006, by request from DOT, that became an opportunity for temporary access for about six months. “This request is consistent with your plan your ordinance and your 2020 Vision Comprehensive Plan.”

Joe Padgett, 1360 Richard Road, is a North Carolina State Trooper who patrols mostly western Rowan County. He patrols or travels Highway 70 daily and has been witness to people coming from the west, past Hendrix BBQ, make a U-turn on this now 4-lane US Highway, to head back to the business. If there was an access, it would allow a safe left turn at a traffic control device and not endangering themselves.

He has 30 years of experience in law enforcement. The only issue to him is the safety of the motoring public.

Kathy Pifferetti, 206 Sycamore, has lived in Westcliffe for over 14 years. She believes it will be safe to open access from Ashbrook Road to the Hendrix BBQ parking lot. She

travels that intersection every day—several times a day. She agreed with Officer Padgett that it is a safety issue making the u-turn.

She did not believe that the comments from the Westcliffe Association were a fair or accurate representation of the households. She believes the benefit to the City of Salisbury were 1) improved tax revenues from the business help the City, 2) it will benefit the citizens because it will be safer and more accessible to Hendrix BBQ.

Frank Pifferetti, 206 Sycamore, offered his recollections of events that have lead to this. Councilman Woodson, he said, thought everyone in Westcliffe was a member of the association. Mr. Pifferetti explained that was not the case; to be in the association you have to pay dues. Over 50 percent of the residents are not members. Mr. Pifferetti said that Councilman Lewis said he knew this but did not say anything and that Councilman Burgin stated that he did not know this.

Mr. Pifferetti said there was a petition of 2-3,000 names signed at Hendrix BBQ in favor of the access to Ashbrook Road which happened after the fact. He offered his support of the access to Ashbrook Road from the Hendrix BBQ parking lot.

Brenda Foil, 150 Magnolia Circle, said it is a hassle getting onto Highway 70 and the U-turn is a problem. Hendrix BBQ has been a good neighbor to all of us. There are a lot of state troopers, City Police, County Deputies, and the Salisbury Fire Department frequenting this establishment. The lack of the access presents a problem for their vehicles.

Mark Fruchtman, 105 Willow Road, agreed with the state trooper's comments about the U-turn being a safety issue. Many vehicles do not have a suitable turning radius to make a safe u-turn. He is in favor of opening this access. Neighbors he spoke to are in favor of the access being open.

The Highway 70 median has really affected business in a negative way.

Richard Coulter, 112 Elmwood Drive, has not noticed any more traffic and is definitely in favor of the driveway on Ashbrook Road. He agreed with Trooper Padgett about the safety issue.

Timmy Garriss is the owner of Hendrix BBQ, said he had been through a lot with the Highway 70 road construction project. He is lucky to still be in business. All the barrels are gone, construction is over but he is still 25 percent off on business. He has been fortunate to survive this long. He is down to the final note—whether he is going to go or stay there.

The business was opened in 1954. He has done everything possible to support the City, law enforcement, and his neighbors.

The driveway entrance is 100-150 feet from the corner and meets the city ordinance.

Board Discussion

Jeff Smith was on the Planning Board for the original case and clearly remembers numerous committee meetings with the president of the Westcliffe Association at that time. Jeff was in favor of access onto Ashbrook Road and also on Lily Road near Walgreens. The Vision 2020 Comprehensive Plan states that access onto minor streets is important. He thought then and he thinks now that that is the best way to access Highway 70 from Hendrix BBQ and from the parking lot. This makes good planning sense.

He suggested that the residents of Westcliffe show up in mass at City Council to let their opinions be heard. The neighborhood participation was, in his view, the reason for Council not approving the access before; although he believes it is bad planning not to.

He addressed Mr. Kelly's comments about the headlights in his parent's bedroom, and based on the diagram, he does not see it as that much of a negative.

Karen Alexander wanted to understand why the neighborhood believed they had an agreement or a covenant with Mr. Garriss not to open access onto Ashbrook Road as a condition for the change zoning the parking lot from residential to commercial.

Diane Young said it is always difficult to know what was truly discussed between the two parties. The traffic report dated April 10, 2006, is a luxury to test pilot the entrance. It appears accidents have not increased. The state trooper's testimony is very important to her and she understands the hazard now to making the u-turn to get into that business. Highway 70 is a bit dicey anyway.

Valerie Stewart said it has been helpful to see the document from the Division of State Highway Patrol that states that they agree with the NCDOT that the driveway access to Ashbrook Road would improve safety conditions at this intersection.

Diane Young stated, "The Planning Board finds and determines that Conditional District petition CD-7-03-2008 its associated master plan last dated May 19, 2008, and any other attached documents are consistent with the goals, objectives and policies of the Vision 2020 Comprehensive Plan and hereby makes a MOTION to recommend approval of CD-7-03-2008." Albert Stout seconded the motion with all members voting AYE. (10-0)

This is going to City Council August 5, 2008.

NEW BUSINESS

A. Special Use Permit

SUP-02-08 House of Hope Re-entry program
730 South Ellis Street
Tax Map-015, Parcel-026

The evidentiary hearing was closed at the previous meeting June 10, 2008. Staff is presenting research items that were requested at the last meeting. David Phillips and Preston Mitchell are still under oath.

The Planning Board continued to receive evidence at their June 10, 2008, Planning Board meeting. The following evidence was submitted by the applicant:

- Information on the success (crime reduction, reduced recidivism rate) of Exodus Homes Reentry Program in Hickory, N.C.
- Information on other similar housing programs called N.C. Oxford Houses – one of which is located here in Salisbury
- Information from the White House on Bush signing federal legislation (HR 1593) entitled the Second Chance Act of 2007
- Information on the House of Hope Program timeline
- Information on licensure requirements for N.C. Department of Health & Human Services
- Copy of the June 3, 2008, House of Hope community meeting at Gethsemane Missionary Baptist Church

The following evidence was submitted by staff based on request by the board:

- Traffic statement by Wendy Brindle, City of Salisbury Traffic Engineer
- Original Special Use Permit request information by David Phillips, Zoning Administrator
- Minimum North Carolina Housing Code standards for space requirements and room sizes
- Rowan County Property Tax Card for the subject site, 730 South Ellis Street

The term “half way house” is a federal term for transitional housing. Everyone in the federal system is required to go to a half way house regardless of crime.

Many of Salisbury’s family home care facilities and supervised living facilities were defined under Salisbury’s previous zoning code.

1. Is the Oxford House in Salisbury (413 S. Institute St.) operational and what are its details?

ANSWER: The house manager, Gary, told staff the Oxford House is a structured program for both alcohol and drug addiction. Clients are those who wanted help by checking into detoxification or treatment centers. Clients are not [knowingly] coming from the state correctional system; they found out that those who had served time did not work out at this particular facility. The Oxford House is a nonprofit group charter with the state of North Carolina and is not subject to any state inspections. Based on staff conversation with this individual, this facility has existed for more than four years.

2. Provide a list of all Group Care, Family Care, and other similar facilities in Salisbury.

ANSWER: There are no other known DHHS-licensed Group Care facilities, as defined by the City's Land Development Ordinance; however, as per the website for DHHS, Rowan County has eight substance abuse programs, all located in Salisbury. There are also programs at RPMC and the Veterans Administration. There are six Residential Treatment Level III facilities and one Family Care Home in Salisbury. These are not located in the neighborhood in question.

3. Provide information from the Governor's Crime Commission on other transitional / reentry facilities in Salisbury – Rowan County.

ANSWER: The Governor's Crime Commission (GCC) does not track, license, or monitor these or other similar facilities; they can only provide information on grants that have been awarded. The GCC provided the following information on programs that received GCC grant funding in Rowan County since 1992:

- *Vision Works Youth Services (2000) is structured Day Care for adjudicated youth between sixth and eighth grades. This is a Rowan County pass-through program.*
- *Adolescence & Family Enrichment Council (2001) provides classes for adolescents and their families and is also a Rowan County pass-through program.*
- *Healthy Children of Rowan County (2004) is an after school program for at-risk boys between the ages of 7 and 12 (150 children). This is also a Rowan County pass-through program.*
- *New Beginnings Community Development Center (2006) is a structured day care for 30 children between the ages of 10 and 15.5. This program is located in East Spencer and pass-through or self-administered status unknown.*
- *Rape, Child, & Abuse Family Crisis Council (2007) is a state-managed but federally funded crisis-counseling center. This is not a Rowan County pass-through program; it is self-administered.*

4. Provide a breakdown of the crime statistics reported for this neighborhood by Salisbury Police Department, and are they representative of a high-crime area in relation to the rest of the city?

ANSWER: Police Chief Mark Wilhelm told Preston Mitchell that the disturbances in the area and the quality of life phone calls (98 disseminated from the 255 calls) are in direct relation to the proximity of Salisbury High School. There is a high level of activity in the mornings and afternoons. This is slightly higher than other parts of the city.

Valarie Stewart wanted more specific data.

5. Provide information on North Carolina Housing Code requirements (minimum housing) for a 1,500-square-foot Group Care facility for multiple non-related individuals versus a single-family house for a family.

ANSWER: David Phillips made contact with Rowan County and the City of Salisbury Fire Marshall to find out what would trigger a change of use for the structure. It would be considered a group R-1 facility (same level as a boarding house). They would probably require a fire sprinkler system that would not be as extensive as a commercial sprinkler system. It has not been determined whether they would use Chapter 34 (rehab) of the Building Code or consider a change of occupancy where they have to be in total compliance. A plan has yet to be submitted.

They would be able to house a maximum of seven residents at a time.

Following are the LDO Standards that must be addressed by Findings of Fact before issuance of a Special Use Permit for a Group Care Facility. The burden rests with the applicant to produce evidence that shows compliance with all five LDO standards, and the burden rests on any opponent to produce evidence that shows that the five standards cannot be complied with.

1. Any structure used for such a facility in the UR or RMX districts shall maintain an appearance of a residence which is compatible with the surrounding neighborhood.
2. These facilities shall be developed and maintained in accordance with all current and applicable provisions of the N.C. Department of Health & Human Services.
3. The use meets all required principles and specifications of the Ordinance and any adopted land use plans, is in harmony with the general purpose and intent, and preserves its spirit.
4. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area.
5. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed.

The following should be noted in the TAKING OF EVIDENCE leading to the FINDING OF FACTS:

1. That the applicant, Westside Community Foundation, Inc., 719 South Caldwell Street, Salisbury, has applied for a Special Use Permit to establish a Group Care Facility to be located at 730 South Ellis Street.
2. The property in question may be identified as Parcel 026 as found on Rowan County Tax Map 015.
3. The property is currently zoned Urban Residential-12 (UR-12).
4. That the UR district allows the use of a Group Care Facility with the issuance of a Special Use Permit.
5. The definition of a Group Care Facility as defined in Chapter 18 Definitions-Use Definitions is as follows:

Group Care Facilities: A facility that provides resident services to more than six individuals of whom one or more are unrelated. These individuals are handicapped, aged, or disabled, [or] are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed or supervised by any federal, state, or county health/welfare agency, such as group dwellings (all ages), halfway houses, nursing homes, resident schools, resident facilities, and foster or boarding homes.

6. As per Section 3.3 Additional Standards Per Use subsection P requires the additional conditions be met:

P. Group Care Facility (More than six residents) – For all districts

1. Any structure used for such facility in the UR or RMX district shall maintain an appearance of a residence which is compatible with the surrounding neighborhood.
2. These facilities shall be developed and maintained in accordance with all current and applicable provisions of the NC Department of Health and Human Services.
7. The structure to be used is an existing house. No changes to the residence have been discussed.
8. A copy of the State permit will be required to be on file with the City of Salisbury to verify approval and compliance with the Department of Health and Human Services requirements.

9. The Salisbury Planning Board is to hold a hearing regarding the Special Use Permit.
10. The evaluation and approval of the Special Use Permit shall be governed by quasi-judicial proceedings, which are based upon the sworn testimony and evidence presented at the hearing relevant to the following standards:
 - a. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
 - b. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
 - c. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed.
11. The Planning Board must find that all conditions have been met based on findings of fact presented.
12. In recommending an application for a Special Use Permit, the Salisbury Planning Board may recommend fair, reasonable, and appropriate conditions on the location, nature and extent of the proposed use.
13. The recommendation of the Salisbury Planning Board will be referred to the Salisbury City Council.

Board discussion

Dick Huffman did not think this is a right or wrong decision. Both sides have some very strong arguments. He usually sees himself as a neighborhood advocate; more often than not he will come on the side of protecting a neighborhood. After consideration, he is going to vote in favor of the SUP.

He understands they have a grant for \$245, 000. They can do this for that amount of money because they have an existing home. If they had to locate elsewhere, they would have to get another \$100,000 to buy a house in the middle of nowhere.

These residents are going to be released whether this home is there or not. They are going to be back into our neighborhoods. Statistics he has seen predict that the risk of residents committing crimes is greatly reduced if they are in a program that provides guidance, shelter, direction and support. They need job training and employment.

Grants are not given if a program is not well thought out. Apparently the Governor's Crime Commission believes this program deserves its support.

There are no other houses of this type in this particular neighborhood and no house to help this type of individual in the City of Salisbury. This is a great program and one that is needed in Salisbury. We would like to see it happen, but we would like to see it happen someplace else. This program does stand a greater chance of succeeding by being located next door to the church. The pastor would be there along with the parishioners. There will be day-to-day “eyes-on” contact. Neighbors would not have to go far to make a complaint.

Mr. Huffman would like to see more square footage per resident.

A MOTION was made and seconded to go past six o'clock.

Albert Stout agreed with Mr. Huffman.

Valarie Stewart hoped that there would be enough evidence to prove the necessary standards. This is a good program but the location in this neighborhood may not be the best location due to perceived crime problems. There is no room for error in making this decision. She does not believe that standard number five will be met.

Jeff Smith hopes to hear public comment, take that passion of the neighborhood, and base his decision on the facts. This use—this program—is not something the committee drafting the Land Development Ordinance ever thought of and he would like to take that issue before the Planning Board in the future. No one seems to be overseeing these programs.

He is supportive with conditions. Mr. Smith would like to see this come before Planning Board if there are any exterior changes to the house.

Maggie Blackwell has taken an opportunity to review all of the evidence. This is a great program and she believes it is needed. People speaking in opposition have said they are against the location in this neighborhood. Standard number five—public health, safety and welfare are not assured.

Someone could donate a house to this 501 (C) (3) and get full sale value on their taxes.

Karen Alexander made a trip to Hickory to see the location and size of a similar program listed in the petitioner's information. It is in a very different neighborhood than this proposal and she believed it to be a more appropriate location. It is on the edge of a very urban area that has very few residences. There were businesses and warehouses in the area and the house was at least twice as large as this proposal.

She is very familiar with this neighborhood proposed to house the reentry program. It is on the edges of the West Square Historic district. They have struggled for years to return rooming houses back to single-family housing.

She cannot find evidence to support number five of the standards nor can she support standard number two. This is too fragile a neighborhood. It is too close to a school with activities that could lead to a bad decision by the House of Hope residents.

It is impossible to go into this house just as it is. You have to meet ADA requirements, which mean the bathrooms have to be much larger and that would take away from bedroom area. If you put this house on the market as a single-family house, you could take those dollars and (as Maggie suggested) acquire a larger house. Construction costs for making the changes necessary to this house will be enormous and will eat up the entire budget.

Robert Cockerl added that standard number five could not be met. He thinks it a good program, but not the right location.

Craig Neuhardt agreed with Robert and acknowledged the comments from Chief Wilhelm about the pressures being felt from the high school. "We do not want to increase that pressure."

Mr. Neuhardt addressed the community, "You have opposed this and you have opposed it because of the value you place on your community. But, I still think you have some responsibility to keep up the enthusiasm for your neighborhood and continue to do some things to reduce that pressure on your own. It's not just keeping something out; it's what you do yourselves."

Diane Young noted that many of these types of services are in much less dense areas. She envisions a program of this nature being in areas like Bringle Ferry Road or Old Concord Road.

We have not proven that this is functionally compatible with the surrounding area or that public health, safety and welfare can be assured. If it were licensed she would feel a little better about the assurance of protecting the public health, safety and welfare, but it has not been proven that will happen. She will be voting against it.

Dr. Beymer is supportive and supportive of the church attempting to take on this effort and appreciative that they are willing to take in on. It seems like a bona fide project that is needed. Location is a concern and standard number five is a concern.

Dr. Beymer said his profession has to do largely with research; he is not sure they have enough data to support substantially that this would be injurious or that it would not be. "Will be assured" is a pretty high standard and he does not think it meets that standard at this point in time. He will be voting against it.

We have to stay concerned about neighborhoods and we have to be proactive. On the other hand, we have to be proactive about rehabilitation. He is not convinced it should be in this area.

FINDING OF FACTS FOR SUP-02-08:Standard One

Jeff Smith made a FINDING: “Based on the evidence presented in the application and presented by House of Hope, there would be no exterior change to the property which is currently a residence. I find that it actually applies to standard number one that any structure used for such facility in UR and RMX shall maintain appearance of residence which is compatible with the surrounding neighborhood. So I find evidence that it will continue.” Dick Huffman seconded the finding. The finding was APPROVED (7-3) with Karen Alexander, Valarie Stewart and Maggie Blackwell voting in opposition.

Diane Young said they are aware that the building will need to be brought up to building code standards which include ADA standards. That means an exterior handicap ramp will most likely need to be constructed. “I would not say that it will undergo no exterior changes; however, you can construct a ramp that would still be in keeping with a residential neighborhood. I still believe the finding of facts support that standard number one can be met.”

Karen Alexander disagreed and thinks that, with her calculations, the house would have to be bigger than it is.

Standard two

Diane Young finds that the second requirement is not applicable because this type of facility is not under any licensure requirements; the second standard is not applicable to this particular special use permit. Albert Stout seconded the FINDING. Maggie Blackwell and Karen Alexander voted against the finding. It was APPROVED. (8-2)

Karen Alexander believed that either a text amendment to change that provision was in order or a denial that says it does not meet the Department of Health and Human Services requirement.

Jeff Smith added that there is a difference between being applicable and not meeting the standard. Mr. Smith would be in favor of a contingency of the special use permit to see an operations and procedure manual. This would give City Council an opportunity that the State and Department of Corrections is not giving to monitor the facility. There needs to be some type of observation of the facility.

Standard three

Jeff Smith made a FINDING that based on the evidence; our Land Development Ordinance does allow group treatment facilities in the UR and RMX. Mr. Smith does not know of any land use plans that are contrary to that. Based on that, it meets all the required principles and specifications of the ordinance and any adopted land use plans; it is in harmony with the general purpose and intent, and preserves the spirit of the neighborhood. Dick Huffman seconded the FINDING with Karen Alexander, Valarie Stewart, and Maggie Blackwell voting against. Albert Stout, Diane Young, Jeff Smith,

Mark Beymer, Craig Neuhardt, Robert Cockerl and Dick Huffman Voting in favor. (7-3) Approved.

The City's Land Development Ordinance Code does not reference the building code or minimum housing standards. Jeff Smith also believes that this proposal meets the minimum housing requirements as presented.

Karen Alexander could not support and say this proposal is in compliance since no plan was submitted. It is a requirement that the person presenting give the Planning Board the information they need to make the decision.

Karen Alexander made a second FINDING that the information and evidence that was presented to Planning Board and provided by the applicant does not clearly meet the building code in her opinion. Maggie Blackwell had concerns about the space requirements for the bedrooms. Craig Neuhardt seconded the FINDING. It was approved (7-3) with Albert Stout, Dick Huffman and Robert Cockerl voting in opposition.

Jeff Smith thought the evidence was not provided to give the answer. That is the reason he would vote for it. "We do not have the evidence to support that finding."

Dan Mikkelsen explained, "If you have two different findings for the same standard, where does it lead us in the big picture?" This will affect Planning Board's final recommendation to City Council. The fact that Planning Board has made multiple findings for this standard (number three) –When the case is presented to City Council, it allows City Council to focus in on things where Planning Board did not receive enough evidence to find in favor. It will help give evidence at a new level to City Council.

Standard four

Jeff Smith made a FINDING stating that, "Based on the evidence presented, I have to find that the proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area given that all the evidence says there will be no exterior changes to the property. If there were any exterior changes to be made for whatever reason (code or otherwise), that would have to come before City Council."

Dick Huffman seconded the finding. The finding "died." (3-7) Jeff Smith, Albert Stout, and Dick Huffman voted in favor.

Diane Young said she would be voting against because, although it will be visually compatible, it will not be functionally compatible. Diane continued to say, "The use in this particular high-density neighborhood with a relatively high instance of crime the use is incompatible functionally with this neighborhood." Karen Alexander agreed.

Diane Young, "Using the evidence we have been given I believe that the proposed plan as submitted will be visually compatible to the surrounding area; however, it will not be

functionally compatible to the surrounding area. Therefore, I believe that Standard number four has not been met.”

Karen Alexander seconded the FINDING and it was APPROVED (7-3) with Albert Stout, Jeff Smith, and Dick Huffman voting “NAY.”

Jeff Smith commented that, “When I look at number four, the functional compatibility does not necessarily go to use. When I think of use, I think of group care facility as the use.” There are plenty of examples where we have more than one person living under a roof in this neighborhood.

Robert Cockerl found that there was not enough evidence to support that the public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated use if located where proposed. Craig Neuhardt seconded the FINDING. Approved (7-3) Opposed were Albert Stout, Jeff Smith, and Dick Huffman.

Jeff Smith recalled that Reverend Nilous Avery said that, in 2007, 547 ex-offenders were released in Rowan County. In 2008 to date, there have been 251 ex-offenders released in Rowan County. The fact that 7 or 8 would be in a facility to assist them is enough evidence to say that the public health and safety at least for those in that house could be assured. There is no question that if there are 258 ex-offenders in our community and there are 8 getting help, that is pretty good evidence; they are going to be there anyway.

Jeff Smith said, “The neighbor could paint the house purple and it could injure the value of the house. I live in Fulton Heights by a group housing facility that does not affect the property value. The two pit bulls my neighbor has on their back porch affects the property value and the ability to sell more than the group home does.”

Mr. Smith went on to say he would add a condition—to Valarie Stewart’s earlier point, “I want to know how this is going to operate, how they are going to choose their clients, etc., and that is a condition that should be considered because there is no overseeing authority.” The residential treatment facilities fall under a different category than counseling facilities where an individual may go for an hour.

Mark Beymer reiterated that there is not enough hard data to state that it will not either substantially injure the value of property or assure that public health safety and welfare is assured.

Dick Huffman did not hear any evidence that the safety, health or welfare would be diminished by this facility. He had some concern with the interpretation of “will be assured. It sounds like we are putting an impossible standard on assuring something that is going to happen in the future. I don’t think anyone can assure exactly what is going to happen.”

Valarie Stewart felt that there was a level of assurance based on the fact that City Council could rescind the permit if there is a problem.

Albert Stout said he has not heard any evidence that this would impact the area negatively.

Jeff Smith thought it good to be able to walk to services in town. Would this fit successfully in any neighborhood? These people are trying to assimilate into society. Dick Huffman added that there is no neighborhood where this would not receive opposition. It is better to provide these individuals some structure for a chance at success.

Preston Mitchell explained the need for a super majority (4/5 – 8 out of 10) vote for the final decision. Jeff Smith asked that staff remind the board in the future.

Maggie Blackwell asked for a 5-minute recess. Albert Stout left at 7:15. The board reconvened at 7:20.

David Phillips recapped that Standard #1 passed (7-3), Standard #2 passed (8-2), Standard #3 first finding passed (7-3)—second finding was not met, Standard #4 first finding failed (3-7)—second finding, which was a negative, passed (7-3) Meaning #4 failed. Standard #5 was a negative (7-3).

Diane Young made a MOTION regarding SUP-02-08 House of Hope re-entry program. “Seeing that, of the five standards that must be met, three of those five were determined to not have been met/or will not be met. Motion is to recommend to City Council that the Special Use Permit be denied.” Karen Alexander seconded the motion. Motion was approved (8-1) Jeff Smith opposed.

This case will proceed to City Council with a negative recommendation July 15, 2008.

OTHER BOARD BUSINESS

Dr. Beymer invited the Planning Board to reflect on the preceding case and to discuss any need or suggestions for changes to procedure in the future.

Maggie Blackwell asked to go on record saying, “I laud the church for their efforts and I wish them well. I hope the program is a success at some point.”

The next Planning Board meeting will be July 8, 2008. (Later canceled)

There being no further business to come before the Planning Board, the meeting was adjourned at 7:30 p.m.

Dr. Mark Beymer, Chair

Jeff Smith, Vice Chair

Secretary, Diana Moghrabi